

ADOPTED BY THE  
MAYOR AND COUNCIL

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RESOLUTION NO. 21584

RELATING TO GROUP INSURANCE; PROVIDING FOR THE AMENDMENT AND RESTATEMENT OF THE CITY OF TUCSON'S SECTION 125 PLAN, TO ENSURE PLAN COMPLIANCE WITH APPLICABLE REVISIONS AND AMENDMENTS TO SECTION 125 OF THE INTERNAL REVENUE CODE OF 1986; THE ADOPTION OF THE FAMILY MEDICAL LEAVE ACT; THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT; AND SECTION 1251 OF THE PATIENT PROTECTION AFFORDABLE CARE ACT; AND DECLARING AN EMERGENCY.

WHEREAS, Section 125 of the Internal Revenue Code as amended, authorizes the City of Tucson to establish and maintain benefit plans that provide employees with an option to elect pre-tax contributions to fund certain medical and child care expenses; and

WHEREAS, on December 9, 1990, the Mayor and Council adopted Resolution No. 15886 directing staff to implement an employee benefit restructuring program as provided for under the City of Tucson Section 125 Plan; and

WHEREAS, amendments to the Internal Revenue Code, and the adoption of the Family Medical Leave Act, the Health Insurance Portability and Accountability Act, and Section 1251 of the Patient Protection Affordability Care Act, requires the City of Tucson to amend and restate the City of Tucson Section 125 Plan for purposes of ensuring plan qualification and compliance.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The City of Tucson Section 125 Plan, attached hereto and incorporated herein by this reference as Exhibit A, is amended and restated effective July 1, 2010.

SECTION 2. The Mayor is hereby authorized and directed to execute the City of Tucson Section 125 Plan documents for and on behalf of the City of Tucson, and the City Clerk is authorized and directed to countersign the same.

SECTION 3. The various City of Tucson officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution and to insure that the City of Tucson Section 125 Plan documents and its Benefit Option Plans continue to comply with applicable tax regulations regarding qualification of such plans.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately effective, an emergency is hereby declared to exist and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, \_\_\_\_\_.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

JF:jm  
6/23/2010 10:16 AM

REVIEWED BY:

  
\_\_\_\_\_  
CITY MANAGER

**CITY OF TUCSON  
SECTION 125 PLAN**

**Amended and Restated as of  
July 1, 2010**

**City of Tucson  
Section 125 Plan**

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## ARTICLE I

### ESTABLISHMENT OF PLAN

1.1 History. The Mayor and Council of the City of Tucson (the "City") originally adopted the City of Tucson 125 Plan (the "Plan"), pursuant to Section 125 of the Internal Revenue Code of 1986 as amended (the "Code"), effective January 1991, in order to establish a "Section 125 Plan" to provide to the City's employees certain welfare and other benefits. Subsequent to the adoption of the Plan, the City adopted and established certain other Benefit Options which, subject to the eligibility requirements set forth in each Benefit Option Plan, became available to the City's employees for the purpose of providing the benefits described therein. As of July 1, 2010, the City hereby amends and restates this Plan in its entirety by adopting the City of Tucson Section 125 Plan (Amended and Restated). The primary purpose of this amendment and restatement is to ensure compliance with applicable revisions and adoption of amendments to the Internal Revenue Code, Family Medical Leave Act, The Health Insurance Portability and Accountability Act of 1996, and section 1251 of the Patient Protection Affordable Care Act and to clarify the provisions of the Plan and its Benefit Option Plans.

1.2 Purpose. The purpose of this Plan is to allow employees who become Participants in the Plan to participate in other qualified Benefit Options maintained by the City and to elect any combination of the benefits offered under any of such Benefit Options, so as to best meet each Participant's individual needs, and to allow Participants to receive, to the greatest extent permitted by law, non-taxable benefits, as permitted by Section 125 of the Code.

1.3 Intention. The City of Tucson Section 125 Plan is intended a qualified benefit plan maintained under Section 125 of the Code as amended from time to time. This Plan shall be interpreted, construed and administered in accordance with such intent. In no event shall this Plan be administered or construed to constitute a plan of deferred compensation.

1.4 Disclosure. The City of Tucson Section 125 Plan is a "grandfathered plan" under the Patient Protection and Affordable Care Act (the Affordable Care Act). As permitted by the Affordable Care Act, a grandfathered plan can preserve certain basic health coverage that was already in effect when that law was enacted. However, the City of Tucson Section 125 Plan, as a grandfathered plan, must comply with certain other consumer protections in the Affordable Care Act. Questions regarding which protections apply and which

protections do not apply to a grandfathered plan and what might cause a plan to change from grandfathered plan status can be directed to the Plan Administrator: City of Tucson Benefit's Office, (520) 791-4241.

1.5 Effect Upon Other Benefit Options. Nothing in this Plan shall be construed to affect the provisions of any other Benefit Option Plan which is intended to comply with the requirements of any other provision of the Code, except to the extent that this Plan permits Participants to purchase or receive the benefits provided under any other Benefit Option Plan with a Salary Reduction Order established by each Benefit Option.

## ARTICLE II

### DEFINITIONS

Application of Definitions. As referred to herein, the words and phrases shall have the following meanings unless a different meaning is plainly required by the context. Words in the masculine gender shall be deemed to include the feminine gender, and words in the feminine gender shall be deemed to include the masculine gender; and unless the context otherwise requires, the singular shall include the plural and the plural the singular. Any headings herein are included for reference only and are not to be construed so as to alter any of the terms of the Plan.

#### 2.1 "Approved Leave"

(a) "Approved Leave With Pay" means an Employee's approved absence from assigned work under applicable standard administrative directives, and applied in a nondiscriminatory manner to all persons similarly situated.

(b) "Approved Leave Without Pay" means an Employee's approved absence from assigned work under applicable standard administrative directives, and applied in a nondiscriminatory manner to all persons similarly situated.

(c) "Military Leave" means a leave of absence protected by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

(d) "Family and Medical Leave Act of 1993" (FMLA) means a leave of absence in accordance with the Family and Medical Leave Act of 1993, as amended from time to time.

2.2 "Benefit Option" means a qualified benefit as defined in section 125 of the Code that is offered under this Plan as City sponsored Benefit Option. (Appendix A)

2.3 Change in Status means any of the following events, along with any mandated events required by amendments to the Code and any mandated Treasury regulations, rulings, notices or other guidance:

- A. An event that changes an Eligible Employee's legal marital status, including: marriage, death of spouse, divorce, legal separation, or annulment;
- B. An event that changes the dependent eligibility coverage under a Benefit Option, including: birth, adoption, placement for adoption (as defined in regulations under Section 9801 of the Code), or death of a dependent;
- C. An event that changes the employment status of the employee, the employee's spouse, or the employee's dependent which changes an individual's eligibility for benefits under a plan sponsored by another employer. Provided, however, that a change shall not be allowed if the cost of coverage under a spouse or dependent's health plan changes mid-year.
- D. An event that causes an Employee's dependent to satisfy or cease to satisfy the definition of Eligible Dependent as set out in the relevant Benefit Option; or
- E. A change in residence of the employee, spouse or dependent, outside the service area.

2.4 "City" means the City of Tucson, a municipality located in the state of Arizona.

2.5 "Claims Administrator" means a third party designated by the Plan Administrator to determine claims for benefits under the Plan or its Benefit Option, or in the absence of such designation, the Plan Administrator.

2.6 "Code" means the Internal Revenue Code of 1986, as amended from time to time.

2.7 "Compensation" means an Employee's total taxable remuneration for the performance of services during each Plan Year in which he is a Participant as reflected on Form W-2, including, but not limited to, his basic wages or salary, overtime pay, bonuses or other forms of compensation, such compensation to be determined before any reduction on account of any withholding, such as Federal or State income taxes, Social Security, insurance premiums or voluntary elective contributions to this Plan or to any deferred compensation plan maintained by the City, but excluding the value of any benefit provided an Employee through any qualified employee pension plan sponsored by the City and any compensation paid in kind.



2.8 “Dependent” means an individual who is eligible for coverage as a dependent of an Eligible Employee as defined under the applicable Benefit Option, the Benefits Handbook and the Code. Effective July 1, 2011, a dependent will include an adult up to the age of 26, as defined under the Patient Protection and Affordable Care Act as modified by the Health Care and Education Reconciliation Act of 2010 (collectively the “Act”).

2.9 “Effective Date” as it applies to the City of Tucson Section 125 Plan means July 1, 1991. This Plan, as amended and restated, shall be effective July 1, 2010. The Effective Date of a Benefit Option Plan is contained in each plan document.

2.10 “Eligible Employee” means:

(a) An active, permanent or appointed Employee of the City who normally works 20 hours or more per week. For purposes of this Plan, Eligible Employee does not include non-permanent or temporary workers;

(b) A permanent probationary Employee who otherwise works more than 20 hours per week; or

(c) An elected or appointed official of the City.

2.11 “Participant” means an Eligible Employee covered under this Plan.

2.12 “Plan” means this City of Tucson Section 125 Plan.

2.13 “Plan Administrator” means the City of Tucson Benefit’s Office.

2.14 “Plan Year” means, for the purpose of the City of Tucson Section 125 Plan, a 12 consecutive month period beginning each July 1st and ending on the next following June 30th. A Benefit Option may have a calendar plan year. Plan Year for the Flexible Spending Arrangement and Dependent Care Assistance Program begins January 1<sup>st</sup> and ends on the following December 31<sup>st</sup>.

2.15 “Salary Reduction Order” means a Participants authorization to reduce his or her compensation in accordance with Article V of the Plan.

2.16 “Severance Date” means, subject to paragraph (b):

(a) The earlier of the date on which an Employee’s employment with the

City terminated on account of a quit, discharge, death, retirement, or layoff.

(b) Except as the Plan Administrator may otherwise permit by rule or regulation, an Employee shall be deemed to be absent during any period of Approved Leave for which he is not compensated by the City. If such Employee fails to return to employment with the City upon the conclusion of such an Approved Leave, such Employee's Severance Date shall be the date as determined by City policy.

2.17 "Spouse" means the legal spouse of a Participant as recognized under federal law.

2.18 "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) as it may be amended from time to time.

**ARTICLE III**  
**PARTICIPATION**

**3.1    Participation**

A.     An Eligible Employee may elect to become a Participant in this Plan. The effective date of participation of coverage of Eligible Employees and their eligible dependents is determined by the City's Benefits Office.

B.     Participation in any of the Benefit Options offered under the Plan shall be governed by the terms, conditions and provisions of the Benefit Option Plan document.

C.     If an Eligible Employee is eligible and chooses to participate in any of the Benefit Options offered through the City, such Employee must execute a Salary Reduction Order which authorizes the reduction of his Compensation.

**3.2    Termination of Participation**

A Participant shall cease to be a Participant in the Benefits Option governed under this Plan on the occurrence of earliest of the following events:

A.    The date the Plan terminates;

B.    The date the individual ceases to be an Eligible Employee; or,

C.    The date participation in the Plan is discontinued by the City then employing  
the Participant as stipulated by a Benefit Option;

**3.3    Termination of Employment; Re-employment**

A.     Except as provided in subsection "C" below (COBRA coverage provision), an Eligible Employee shall cease to continue to be an participant in this Plan or a Benefit Option upon termination of employment and may not continue any Salary Reduction Order.

B. If an Eligible Employee is reemployed by the City within thirty (30) days of termination, benefit participation will be reinstated in accordance with the provisions of the Benefit Option or, in the absence of such provisions, as provided by the Plan Administrator. Otherwise, an Eligible Employee reemployed by the City shall be treated as a new Employee.

C. Notwithstanding the above, a former Participant or other qualified beneficiary, as defined in 26 U.S.C. § 4980B of the Code, or a former Participant who is on a Military Leave may elect to continue coverage as provided by the Consolidated Omnibus Budget Reconciliation Act (COBRA). Contributions to maintain continuation of coverage shall be made directly to the Plan Administrator or insurance carrier as applicable and shall not be made under this Plan. (See Section 5.9 of Article V, Salary Reduction Order).

## **ARTICLE IV**

### **ELECTION OF BENEFITS**

#### **4.1 Benefit Elections**

(a) Subject to all other provisions of this Plan, a Participant may choose between receiving his or her full Compensation and receiving coverage under one or more of the Benefit Options set out in Appendix A. Enrollment in any of the Benefit Options offered under this Plan shall be governed by the terms, conditions and provisions of the Benefit Option Plan document.

#### **(b) Irrevocability of Elections**

Unless an exception applies herein consistent with applicable laws or required by law, a Participant's election under the Plan is irrevocable for the Period of Coverage to which it relates.

#### **4.2 Annual Enrollment Procedures**

Upon initial eligibility and prior to the commencement of each Plan Year (or in the case of the Flexible Spending Arrangement and the Dependent Care Spending Account, prior to the commencement of the calendar year), the Plan Administrator shall provide instructions to Eligible Employees regarding the election and enrollment procedures, in which such Eligible Employee shall elect the Benefit Options and agrees to make Salary Reduction Order as provided in Article V. The elections made must be made in accordance with the Plan enrollment procedures to be effective as of the first day of the year and must be completed on or before such date as the Plan Administrator shall specify, which date shall be no later than the beginning of the first pay period of the year to which such election applies.

#### **4.3 Duration of Elections**

Except as provided in Section 4.4, a Participant's election is irrevocable and shall remain in effect through the last day of the Plan Year (or in the case of the Flexible Spending Account and the Dependent Care Spending Account, until the last day of the calendar year), subject further to the conditions set forth in the plan document of the respective Benefit Option.

#### 4.4 Reduction or Revocation of Certain Elections by Plan Administrator

A. The Plan Administrator may revoke or reduce a Participant's election of elective contributions and non-elective contributions under this Plan at any time prior to or during a Plan Year, to the extent necessary to ensure the plan complies with applicable federal and state law.

#### B. Family and Medical Leave and Military Leave

Except as provided in paragraph 2 below, a Participant who goes on unpaid FMLA or Military Leave under USERRA may:

- a. Revoke his or her election under a Benefit Option at the onset of such leave or at any time during such leave; and
- b. Revoke his or her election with respect to non-health benefits to the same extent as employees who are on unpaid leaves of absence other than FMLA or Military Leave are permitted to revoke such elections.

Upon return from FMLA, an Eligible Employee who has revoked an election may choose to reinstate such election, provided, however, that an Employer may require reinstatement of the election if employees who return from a period of unpaid leave not covered by the FMLA are also required to resume participation under a Benefit Option upon return from leave. Upon return from Military Leave, an Eligible Employee's benefits shall be reinstated in accordance with USERRA.

## ARTICLE V

### SALARY REDUCTION ORDER AND ACCOUNTS

#### 5.1 Salary Reduction Order.

(a) Subject to the limitations of paragraph (b) herein, an Employee who is eligible to participate in a Benefit Plan may execute a Salary Reduction Order authorizing the City to reduce his Compensation by the dollar amount stated in such Salary Reduction Order. The amount of Compensation to be reduced must be specified as a whole dollar amount, or an amount equal to the cost of benefits purchased under the Benefit Plan where such costs are determined by a person other than the Employee and the Employee has no control over the determination of such costs. Upon executing a Salary Reduction Order, an Employee, in consideration thereof, shall become a Participant in a Benefit Plan as of the effective date of his Salary Reduction Order as determined by each Benefit Plan and shall be entitled to participate and purchase benefits under each of the Benefit Plans maintained by the City in accordance with the terms thereof, so long as the Employee continues to be a Participant hereunder, pursuant to Article III.

(b) In no event shall a Participant's total salary reduction for any Plan Year exceed the Participant's Compensation for that Plan Year.

(c) A Salary Reduction Order does not apply to contributions made for Domestic Partners or their dependents. However, if there is at least one dependent child covered who is a dependent child of the employee as defined in Section 2.8 a Salary Reduction Order will apply to the family premium.

#### 5.2 Time of Salary Reduction Election.

(a) Upon request, an Employee who becomes eligible to participate in a Benefit Plan (as determined under Article III herein), shall receive from the Plan Administrator a Salary Reduction Order form, pursuant to which such Employee may authorize the City to reduce his Compensation by the amount specified by such Salary Reduction Order, not to exceed the limitation specified in Section 5.1(b). The form, content and means of communication and distribution of such Salary Reduction Order shall be determined by the Plan Administrator, in his sole discretion, from time to time. A Salary Reduction Order may be filed with the Plan Administrator on or before the date an Employee is

eligible to participate in a Benefit Plan or at any time thereafter. A Salary Reduction Order shall be effective as of the date it is both executed by the Participant and received by the Plan Administrator, except as stated in Section 5.2(b).

(b) If the Plan Administrator receives an Employee's Salary Reduction Order at a date when it is impracticable to implement the instructions contained in such order by the first day of the month following its receipt by the Plan Administrator, such Salary Reduction Order shall be made effective as of the first day of the second month following the date it is received by the Plan Administrator, and the Employee shall become a Participant in the Benefit Plan on that same date.

5.3 Election Amendments Required by Plan Administrator. Any provision of this Plan to the contrary notwithstanding, either prior to or during any Plan Year, the Plan Administrator may require all or any class of Participants to amend the amount of any Salary Reduction Order then in effect as to future reductions in salary if the Plan Administrator, in his discretion, determines that such reduction is necessary or advisable in order to maintain the orderly and efficient operation of the Plan. Any change of a Participant's Salary Reduction Order made pursuant to this Section 5.3 shall be made in accordance with such rules, regulations and procedures as the Plan Administrator may, in his sole discretion, adopt from time to time.

5.4 Changes or Suspension of Salary Reduction Order. Except as provided in Section 5.6, a Participant may not change a Salary Reduction Order given under this Article during a Plan Year and such Salary Reduction Order shall be effective for the entire Plan Year to which it relates. A Participant may change or stop his Salary Reduction Order effective as of the first day of a succeeding Plan Year. Except as the Plan Administrator may otherwise provide by rule or regulation a Participant's direction to change or stop a Participant's Salary Reduction Order shall be effective only if received by the Plan Administrator during an open enrollment period preceding the next Plan Year. Any provision of this Plan to the contrary notwithstanding, the Plan Administrator may limit a Participant's right to change a Benefit Plan's Salary Reduction Order to the extent necessary to maintain this Plan as a qualified plan under Section 125 of the Code and the regulations thereunder.

5.5 Reauthorization of Suspended Salary Reduction Orders. Except as provided in Section 5.6, and subject to such limitations as the Plan Administrator may adopt by rule or regulation, a Participant who has stopped his Salary Reduction Order may deliver a new Salary Reduction Order authorizing his Compensation to be reduced in accordance with this Article V. A Salary



Reduction Order which reauthorizes salary reductions shall be effective as of the first day of the Plan Year following the date the Participant executes and delivers such order to the Plan Administrator. Except as the Plan Administrator may otherwise provide by rule or regulation, excluding application of Section 5.6, a Salary Reduction Order directing the Plan Administrator to recommence the reduction of a Participant's Compensation shall be effective only if received by the Plan Administrator during the open enrollment period preceding the succeeding Plan Year.

5.6 Change in Status Event. Subject to such limitations as the Plan Administrator may adopt by rule or regulation, a Participant may initiate, stop or reauthorize his Salary Reduction Order, if such initiation, suspension or reauthorization is on account of and consistent with a change in status events. Listed below are the permissible changes in status events.

(a) Change in legal marital status, including marriage, death of Spouse or qualified Domestic Partner, divorce, legal separation, annulment, or termination of a Domestic Partnership.

(b) Change in the number of Dependents, including birth, adoption, placement for adoption, or death of a Dependent.

(c) Change in employment status, including termination or commencement of employment of the Employee, Spouse or qualified Domestic Partner, or Dependent.

(d) Significant cost and/or coverage changes occurring during open enrollment for group health plans offered through a Spouse's or qualified Domestic Partner's employment. The change made under this Section 125 Plan must be consistent with event that occurred.

(e) Increases or decreases in the amount charged by a dependent care provider.

(f) Changes in work schedule including an increase or decrease in the number of hours of employment by the Employee, Spouse or qualified Domestic Partner, or Dependent, including a switch between full-time and part-time status, a strike or lockout or commencement or return from an unpaid leave of absence.

(g) The Dependent satisfies or ceases to satisfy the requirements for unmarried Dependents.

(h) If the Employee, Spouse or qualified Domestic Partner, or Dependent becomes entitled to Medicare or Medicaid, the Employee may elect to cancel the coverage of the Employee, Spouse or qualified Domestic Partner, or Dependent.

(i) If the Plan receives a qualified medical child support order (QMCSO) pertaining to an Employee's Dependent, the employee may elect to add the Child to the Plan (if the QMCSO requires coverage) or drop the child from the Plan (if the QMCSO requires the ex-spouse to provide coverage). This does not apply to children of a Domestic Partner with the exceptions of dependents that are also the dependents of the employee.

A Participant shall advise the Plan Administrator within 31 days after any change of status events. The Participant shall further advise the Plan Administrator of the relationship of such change in status events to his requested change, suspension or reauthorization of his Salary Reduction Order. The Plan Administrator shall approve or deny the change, suspension or reauthorization in his sole discretion, such discretion to be applied in a uniform and nondiscriminatory manner, in accordance with such rules and regulations as he may adopt. Except as the Plan Administrator may otherwise provide by rule or regulation, the Plan Administrator will approve a Participant's request to initiate, stop or reauthorize a Salary Reduction Order only if received by the Plan Administrator within 31 days of the event.

5.7 Consistency. Any permitted change must be consistent with the status event.

5.8 Participation in Benefit Plans. Any Participant who has a Salary Reduction Order in effect shall be entitled, if eligible, to elect to purchase benefits provided under any of the Benefit Plans in accordance with the terms thereof. All such Benefit Plans shall provide that benefits must irrevocably be elected in advance and such election may only be changed or suspended during the open enrollment period preceding a Plan Year, except for a change in family status. A Participant shall not be entitled to substitute a benefit under one Benefit Plan for a benefit under another Benefit Plan during a Plan Year following his irrevocable election. In all cases, the selection of benefits under the Benefit Plans shall be limited to the extent necessary to maintain this Plan and the Benefit Plans as a qualified plan under Section 125 of the Code and the regulations thereunder.

## 5.9 Employee After-Tax Contributions

Under certain circumstances, a Participant may pay for coverage under certain Benefit Options from Compensation that has been subject to federal income taxes. The monetary amount associated with these payments constitutes Employee After-Tax Contributions. Employee After-Tax Contributions may be made for the following purposes:

- A. To pay for coverage of a domestic partner or any other individual who may not be treated as a dependent of the Participant under any applicable section of the Code;
- B. To pay for continuation of coverage during unpaid FMLA Leave as described in Section 5.5;
- C. For such other purposes as determined by the Plan Administrator on a nondiscriminatory basis for all similarly situated Participants.

## ARTICLE VI

### AMENDMENT, TERMINATION AND SEVERABILITY

#### 6.1 Right to Amend

The City reserves the right to make at any time with proper notice modifications, revisions or amendments to this Plan or Benefit Options, it determines to be necessary or desirable to maintain the qualifications of the Plan or Benefit Options under Section 125 of the Code, and any applicable regulation or laws, or to ensure the successful administration and operation of each Plan. The City shall make amendments in writing; and, no amendment shall have any retroactive adverse effect on a Participant, unless the City determines such amendment is necessary or desirable to comply with applicable law.

#### 6.2 Right to Terminate

The City, through a formal resolution, shall have the authority to terminate the Plan at any time in whole or in part; but in no event shall such termination prejudice any claim or benefit under the Plan that was incurred but not paid prior to the termination date.

#### 6.3 Severability

Should any part or provision of this Plan or a Benefit Option subsequently be invalidated by a court of competent jurisdiction or enforcement agency, the remainder of the Plan and its Benefit Options shall be given effect to the maximum extent possible.

## ARTICLE VII

### PLAN ADMINISTRATION

#### 7.1 Finance Director Duties

The Finance Director or his/her designee shall be responsible for maintaining a system of accounts for the salary reduction contributions in accordance with generally accepted accounting principles for payroll and benefit plans. The finance director also shall be responsible for oversight of the payroll procedures connected to the benefit administration, such as the collection of contributions and other duties pursuant to Sections 22-81, 22-82, 22-83 and 22-84 of the Tucson City Code. The Finance Director shall be responsible for federal or state reporting responsibilities under the Internal Revenue Code or the Patient Protection and Affordability Care Act and for any request from state or federal agency of competent jurisdiction, with regard to financial records.

#### 7.2 Human Resources Director Duties

The Human Resources Director or his/her designee is hereby charged with the duty of causing all Eligible Employees to be informed as to their benefits, rights and obligations under such insurance or medical health plan agreement pursuant to section 22-84 of the Tucson City Code.

#### 7.3 Plan Administrator

The City shall designate the Benefit's Office of the City of Tucson as Plan Administrator. The Plan Administrator's principal duty shall be to oversee the day-to-day operations of the Plan benefits and ensure that the Plan is administered in accordance with its terms and for the exclusive benefit of Participants in the Plan, without discrimination among them.

#### 7.4 Plan Administrator Powers and Duties

The Plan Administrator shall have full power to administer the Plan in all of its details, subject to applicable requirements of law. For this purpose, the Plan Administrator's powers will include, but will not be limited to, the following discretionary authority, in addition to all other powers provided by this Plan:

- A. To establish a funding policy and method consistent with the objectives of the Plan and as required by law.

- B. To determine and set the cost associated with each Benefit Option offered under this Plan. Such cost can be changed at any time prior to or during a Plan Year with prior notification to Participants.
- C. To make and enforce such rules and regulations as it deems necessary or proper for the efficient administration of the Plan, including the establishment of any claims procedures that may be required by applicable provisions of law.
- D. To interpret the provisions of the Plan that made in good faith will be final and conclusive on all persons claiming benefits under the Plan.
- E. To decide all questions concerning the Plan and the eligibility of any person to participate in the Plan.
- F. To appoint such agents, counsel, accountants, consultants and other persons as may be required to assist in administering the Plan.
- G. To allocate and delegate responsibilities under the Plan and to designate other persons to carry out any of its responsibilities under the Plan, including, but not limited to, delegating certain claims administration duties to a Claims Administrator, provided that any such allocation, delegation or designation shall be set out in a written instrument executed by the Plan Administrator and the designated party.
- H. To communicate to any insurer or other supplier or administrator of benefits under this Plan in writing all information required to carry out the provisions of the Plan.
- I. To notify the Participants in writing of any substantive amendment or termination of the Plan or of a change in benefits available under the Plan.

Notwithstanding the provisions of this section, the powers and duties allocated to the Plan Administrator and described in this section shall only be applicable with respect to a claim arising under the Benefit Options or to the administration of the Benefit Options to the extent that such power or duty is not allocated (either expressly or by implication) to the individual(s) or entity appointed to serve as administrator of any of the Benefit Options.

#### 7.5 Examination of Records

The Plan Administrator will make available to each Participant such records under the Plan as requested and pertaining to the Participant for examination at reasonable times during normal business hours.

#### 7.6 Reliance on Tables, etc.

In administering the Plan, the Plan Administrator will be entitled to the extent permitted by law to rely conclusively on all tables, valuations, certificates, opinions and reports that are furnished by, or in accordance with the instructions of, the administrators of any of the plans offered within the Plan, or by accountants, counsel or other experts employed or engaged by the Plan Administrator.

#### 7.7 Nondiscriminatory Exercise of Authority

Whenever, in the administration of the Plan, any discretionary action by the Plan Administrator is required, the Plan Administrator shall exercise its authority in a nondiscriminatory manner so that all persons similarly situated will receive substantially the same treatment.

#### 7.8 Standard of Review

The Plan Administrator shall perform duties in its sole discretion shall determine appropriate courses of action in light of the reason and purpose for which this Plan is established and maintained. In particular, the Plan Administrator shall interpret all Plan provisions, and make all determinations as to whether any particular Participant is entitled to receive any benefit under the terms of this Plan, which interpretation shall be made by the Administrator in its sole discretion. Any construction of the terms of the Plan that is adopted by the Plan Administrator and for which there is a rational basis shall be final and legally binding on all parties.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

#### **8.1    Information to be Furnished**

Participants shall provide the Plan Administrator with such information and evidence and shall sign such documents, as may reasonably be requested from time to time, for the purpose of administration of the Plan.

#### **8.2    No Rights to Benefit**

Neither the establishment/amendment of the Plan nor the payment of any benefits, will be construed as giving to any Participant or other person any entitlement, or legal or equitable right against the City.

#### **8.3    Governing Law**

This Plan and all Benefit Options shall be construed, administered and enforced according to the laws of Arizona except as may be preempted by federal law.

#### **8.4    Facility of Payment**

If the Plan Administrator deems any person entitled to receive any amount under the provisions of this Plan incapable of receiving or disbursing the same by reason of minority, death, illness or infirmity, mental incompetence or incapacity of any kind, the Plan Administrator may, in its discretion, take any one or more of the following actions:

A.    Apply such amount directly for the comfort, support and maintenance of such person.

B.    Reimburse any person for any such support previously supplied to the person entitled to receive any such payment.

C.    Pay such amount to a legal representative or guardian or any other person selected by the Plan Administrator for the comfort, support and maintenance of the person entitled to receive such amount, including without limitation, any relative who had undertaken, wholly or partially, the expense of such person's comfort, care and maintenance, or any institution caring for such person. The Plan Administrator may, in its discretion, deposit any amount due to



a minor to his credit in any savings or commercial bank of the Plan Administrator's choice.

#### 8.5 Lost Payee

Any amount due and payable to a Participant or beneficiary shall be forfeited if the Plan Administrator, after reasonable effort, is unable to locate the Participant or beneficiary to whom payment is due. Such forfeited amounts shall be applied toward the administrative expenses of the Plan, or shall revert to the applicable City. However, any such forfeited amount will be reinstated through a special contribution to the Plan by the City and become payable if a claim is made by the Participant or beneficiary. The Plan Administrator shall prescribe uniform and nondiscriminatory rules for carrying out this provision.

#### 8.6 No Guarantee of Tax Consequences

Notwithstanding anything herein to the contrary, the City neither ensures nor makes any commitment or guarantee that any amounts paid to a Participant pursuant to the Plan or any amounts by which a Participant's wages are reduced pursuant to Article V will be excludable from the Participant's gross income for federal, state or local income tax purposes. It shall be the obligation of each Participant to notify the Plan Administrator if the Participant has reason to believe that any payment made or to be made to the Participant pursuant to the Plan is not excludable from the Participant's gross income for federal, state or local income tax purposes.

#### 8.7 Funding

Payments due under the Plan will be made from designated accounts on behalf of the City or otherwise provided by a third party insurance company with whom the Plan Administrator has contracted to provide certain benefits, and no funds will be placed in escrow or earmarked to pay benefits.

#### 8.8 Indemnification of City by Participant

If a Participant receives one or more payments in accordance with applicable Plan provisions that are not for eligible dependent care expenses or eligible medical expenses, such Participant shall indemnify and reimburse the City for any liability it may incur for failure to withhold federal, state or local income tax or Social Security tax from such payments. Such indemnification and

reimbursement shall not exceed the sum of the amount of additional federal and state income tax that the Participant would have owed if the payments had been made to the Participant as regular cash Compensation plus the Participant's share of any Social Security tax that would have been paid on such Compensation.

## ARTICLE IX

### PROTECTED HEALTH INFORMATION PROVISIONS

#### 9.1 Permitted Disclosures of Protected Health Information

Unless otherwise permitted or required by law, and subject to obtaining written certification, any Benefit Option that is a Health Plan as defined in 45 CFR §160.103 may disclose Protected Health Information (as defined in 45 CFR §160.103) to an City only for the purpose of enabling the City to perform administrative functions related to the treatment, payment and health care operations of such Health Plan as defined in 45 CFR §164.501.

In no event shall the Plan Administrator or City employees be permitted to use or disclose Protected Health Information in a manner that is inconsistent with 45 CFR §164.504(f).

#### 9.2 Conditions of Disclosure

With respect to any Protected Health Information disclosed, the City and its employees shall:

- A. Not use or further disclose the Protected Health Information other than as permitted or required by law.
- B. Ensure that any agents, including a subcontractor, to whom it provides Protected Health Information received from the Plan and Benefit Option Plans agree to the same restrictions and conditions that apply to the Plan Administrator and City employees with respect to Protected Health Information.
- C. Not use or disclose the Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the City.
- D. Report to the Plan Administrator any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware.
- E. Make available Protected Health Information in accordance with 45 CFR §164.524.

F. Make available Protected Health Information for amendment and incorporate any amendments to Protected Health Information in accordance with 45 CFR §164.526.

G. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR §164.528.

H. Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from the Health Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Health Plan with subpart E of 45 CFR §164.

I. If feasible, return or destroy all Protected Health Information received from the Plan or Benefit Option Plans that the City maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

J. Ensure that the adequate separation between the Plan or Benefit Option Plans and City required in 45 CFR §504(f)(2)(iii), is satisfied.

K. If the City receives electronic protected health information, as defined in 45 CFR §160.103, it shall:

1. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI that it creates, receives, maintains or transmits on behalf of the Plan;

2. Ensure that the adequate separation between the Plan and the City with respect to electronic protected health information is supported by reasonable and appropriate security measures;

3. Ensure that any agent, including a subcontractor, to whom it provides electronic protected health information to implement reasonable and appropriate security measure to protect the electronic protected health information; and

4. Report to the Plan Administrator any security incidents of which it becomes aware concerning electronic protected health information.

### 9.3 Separation Between Health Plan and City

To satisfy the requirements above, the following conditions shall apply:

A. Protected Health Information may only be used and/or disclosed by the Plan to City employees who are engaged in activities relate to plan administration functions, or who have oversight responsibility for the plan, including employees with oversight responsibility for claims payment and third party Claims Administration. These employees include:

1. Benefit Analyst
2. Benefits Supervisor
3. Assistant Benefits Director
4. Human Resources Director
5. Insurance Clerk
6. Administrative Assistant (Benefits)
7. Payroll Clerk
8. Financial Services Supervisor
9. Account Clerk Supervisor
10. Senior Account Clerk
11. Retirement and Benefits Administrator
12. Senior Benefit Analyst
13. Lead Management Analyst
14. Management Analyst

B. The access to and use of Protected Health Information by the individuals described in Section 9.3 A. above shall be restricted to the plan administration functions that the Employer performs for the Health Plan.

C. An individual described in Section 9.3 A. above who fails to comply with the provisions of the plan document relating to the use and disclosure of Protected Health Information shall be subject to disciplinary action under the Employer's established policies and procedures.

### 9.4 Certification

The Benefit Options shall disclose Protected Health Information to the Plan Administrator only upon the receipt of a certification that the plan document has been amended to incorporate the provisions of 45 CFR §164.504(f)(2)(ii). The

Benefit Options shall not disclose Protected Health Information to the Plan Administrator as otherwise permitted herein unless the statement required by 45 CFR §164.520(b)(1)(iii)(C) is included in the appropriate notice.

IN WITNESS WHEREOF, the City has caused this Plan to be executed in its name and behalf effective the 1<sup>st</sup> day of July, 2010, by its officer thereunto duly authorized.

~~ATTEST~~ (SEAL)  
COUNTERSIGN

THE CITY OF TUCSON

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Robert E. Walkup

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Title

**CITY OF TUCSON  
SECTION 125**

**BENEFIT OPTION PLANS**

**APPENDIX A** to Exhibit A to Resolution 21584

A Participant in this Plan may elect coverage under the following Benefit Options, which are offered to the City's Employees:

1. Medical Plans (various options including HRA and a HDHP/HSA plan)
2. Vision Plan
3. Dental Plan
4. Flexible Spending Account Plan
5. Dependent Care Spending Account Plan